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20 YEARS OF CHALLENGES:

THE CALIF. A.B.C. STORY



Dealing With Millions

Bulletin Staff Writer

Although the State Department of Alcoholic Beverage Control was created 20 years ago, its predecessor, the State Board of Equalization, continues to have basic authority in the industry.

That's because the equalization board is California's tax collector. And those in the alcoholic beverage industry are major taxpayers in California. Aside from property taxes, those in the industry pay license fees and excise taxes.

Alcoholic beverages are taxed (excise) at the following rates:
Beer \$.04 per gallon
Still Wines not over 14% alcohol by volume01 per wine gallon
Still wines over 14% alcohol by volume02 per wine gallon
Sparkling wine30 per wine gallon
Sparkling hard cider02 per wine gallon
Distilled spirits of proof strength or less 2.00 per wine gallon
Distilled spirits over proof strength 4.00 per wine gallon

And the above taxes are in addition to taxes imposed by the federal government and the state sales tax collected by retailers. The state excise on alcoholic beverages, exclusive of license fees, collected in the past years provides this multi-million-dollar record:

FISCAL YEAR	EXCISE TAXES COLLECTED
1968-69	\$ 99,677,029
1969-70	\$105,940,680
1970-71	\$106,556,094
1971-72	\$112,273,464
1972-73	\$114,543,008

License and other fees collected during the past fiscal years by the ABC and the amount distributed to cities and counties and the State General Fund were:

Total Revenue	\$20,732,309
General Fund	\$ 7,837,829
To Cities and Counties	\$12,894,480

All funds for the sale of original licenses and transfer fees are deposited in the State General Fund. 10 per cent of offers in compromise, penalties, and yearly renewals, and \$24 per year for each off-sale general license and \$52 per year for each distilled spirits rectifier's, wholesaler's, manufacturer's, Manufacturer's agent's, importer's general license and California winegrower's agent's license are also deposited in the General Fund.

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How It All Began; Where It's Headed

By BOB FORSYTH
Bulletin Staff Writer

The evil of Prohibition wasn't that the citizens couldn't obtain alcoholic beverages. The true evil was that organized crime moved into American society.

As crime chief Al Capone put it: "All I did was supply a pretty popular demand."

And so, by 1932, it was clearly the problems of regulation of alcohol and of protecting the small businessman. The American public refused (even under penalty of law) to give up their freedom of personal choice and 2) That the government — in one method or another — must enforce and regulate certain portions of the alcoholic beverage business.

The result, of course, was the 1933 repeal of Prohibition. And with that repeal came government intervention.

And when the 21st Amendment to the U.S. Constitution became effective, California lawmakers pre-empted the field in licensing, regulations and taxation for both on-sale and off-sale licensees. The counties and cities were prohibited from levying any off-sale licensees. The counties and cities were prohibited from levying any local tax, other than the real property tax, on any establishment engaged solely in the sale of alcoholic beverages.

But 1933 was not just a year of repeal. It also was a year marking the middle of one of the worst economic years in the history of the United States — the Depression.

The Depression struck deeply all segments of the economy, perhaps hardest hit were those small businessmen whose day-to-day existence was vulnerable.

TWO CHOICES

California lawmakers, in deciding how to regulate the sale of alcoholic beverages, had two basic choices. Declare the Golden State a licensed state or a controlled state. A licensed state would mean that the state grants licenses to individuals who conduct the various facets of dispensing alcoholic beverages and a controlled state would mean that distilled spirits are obtainable only in state stores.

The decision was made. California would be a licensed state and with it certain rules would be enacted to satisfy both

The State Board of Equalization was designated as the regulatory agency and a bevy of so-called "fair trade" laws were adopted.

COURT DECISIONS

The idea of fair trade went back to the turn of the century in the flavor of the anti-trust laws. In 1913, Justice Louis D. Brandeis wrote an article about protection for the consumer, monopoly and property rights: "If a dealer is selling unknown goods or goods under his name, he alone should set the price; but when a dealer has to use somebody else's name or brand in order to sell goods, then the owner of that name or brand has an interest which should be respected."

Brandeis also wrote: "Why should one middleman be allowed to indulge in a practice of price-cutting, which tends to drive the maker's goods out of the market and in the end interferes with people getting the goods at all?"

Therefore, California legislators made it state policy to promote orderly marketing conditions and temperance.

CONTROLS SUSPENDED

In 1939, the Board of Equalization placed liquor under mandatory minimum consumer price controls. The enforcement continued until 1944 when the board suspended the controls because World War II conditions (liquor shortage and O.P.A. ceiling prices) had removed cut-rate bargain sales and price wars from being a practical problem in liquor control.

In 1947, with O.P.A. price controls lifted and the war over, the Board of Equalization reinstated the mandatory minimum consumer price system for liquor. And that system — despite

several court and legislative challenges — has remained in effect to the present day.

And California, particularly with the end of World War II, was growing as millions of people turned west for a better life. By the early 1950's it was clear that the Board of Equalization was no longer equipped to administer the giant problem of alcoholic beverage control. Furthermore, the ugly problem of scandal had reared its head in terms of alcoholic beverage control in California and lawmakers wanted to preserve control with respect.

ABC DEPT. CREATED

In 1954, then-Assemblyman Caspar Weinberger (later Governor Reagan's finance director and later still a top official in the Nixon and Ford administrations) introduced legislation which put a constitutional amendment on the ballot. And that year California voters approved the amendment to Section 22 of Article XX of the State Constitution which created the State Department of Alcoholic Beverage Control (ABC). The appointment of a director would be made by the governor, subject to confirmation by the State Senate.

This month marks the 20th anniversary of the ABC. And it has not been an easy 20 years. And, further, there are not indications that the next 20 years will be any easier.

ABC, because it deals with the highly sensitive issue of alcohol beverages, continually is examined and inspected. It is forced to walk a thin line between private industry and public concern.

And the criticism has come from all segments. ABC is in the uncomfortable position of regulating private industry (which is a problem in the philosophy of the free enterprise system). It's in the uncomfortable position of administering rules that affect personal freedom (which is a problem in the philosophy of personal rights). It's in the uncomfortable position of dealing with a commodity which, when abused, contributes to death, injury and family unrest.

Yet out of this it has received — generally — the respect (sometimes grudgingly) of most segments of California.

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Enforcement: ABC Has The Muscle

Bulletin Staff Writer
There is no question that without strict enforcement, the ABC rules would be meaningless.

The Legislature knows full well the delicate balance between control of the alcoholic beverage industry and enforcement of the rules.

It's for that reason that many violations of the ABC Act are punishable by fine or imprisonment under proceedings in criminal courts, and the same violations may be subject to accusations filed under departmental administrative proceedings to determine suspensions or revocations of the license privilege.

Decisions of the department denying, suspending or revoking licenses are subject to review on appeal by the ABC Appeals Board.

The Appeals Board is an appellate administrative agency deriving its authority from the State Constitution. It is separate from the ABC Department, but its functions are to afford appellate review of decisions of the department.

The board's business office is in Sacramento and oral arguments on appeal are heard in major metropolitan areas throughout the state.

The board consists of three members appointed by the governor. Hugh M. Burns, former state senator and former president pro-tem of the State Senate, is chairman of the

Appeals Board. Other members are Eugene V. Lipp and Kay Valory.

The board's review is limited to determining whether the department proceeded in the manner provided by law, whether it abused its discretion, whether its decision is legally correct and supported by evidence, or whether there was additional evidence which should have been admitted at the hearing.

If the ABC department or another party to the hearing is dissatisfied with the decision of the Appeals Board, there is provision for review by the appellate courts.

ENFORCE ABC ACT

The ABC Act, of course, is the Bible of the department — and of all who do business with the department.

It's important to note that it is the duty of every peace officer and every district attorney in California to enforce the provisions of the act. And if such officers refuse or neglect to do so they are guilty of a misdemeanor.

The ABC Department employee investigators who have powers as peace officers to enforce the penal provisions of the act. These officers are engaged mainly in investigation of applications for licenses and violations of the act.

Any licensee who refuses to permit the department or any of

its representatives to make an inspection or an examination of his books and records in terms of the act, is guilty of a misdemeanor.

Not only does the department have the right to visit and inspect licensed premises, the ABC rule requires that there shall be sufficient interior light in retail premises to make easily discernible the appearance and conduct of all persons in the premises. This is to assist in enforcement so far as minors and intoxicated persons are concerned.

For retailers, the age-old problem of minors continues. For the record, the legal age in California is 21. And alcoholic beverages may not be furnished to a minor where the beverage is for consumption by the parents.

How about protecting oneself in respect to minors? First: A licensee is authorized to demand documentary evidence of the age and identity of any person in his premises, and should do so immediately prior to the sale whenever there is the slightest doubt of the age of the prospective patron.

And a licensee or his employee may refuse to sell or serve alcoholic beverages to any person whose age is questionable.

In addition, a public premises licensee must post a sign visible from each public entrance and a similar sign in the interior of the premises reading, "No Person Under 21 Allowed."

DEMAND EVIDENCE

And what is documentary evidence? The identification card should be issued by some

governmental agency and must have a current description of the person presenting it which reasonably describes him or her as to weight, height, sex and color of eyes and hair and age.

Although minors may be arrested for purchasing or consuming or possessing alcoholic beverages, under limited circumstances, minors may be employed in on-sale premises.

A minor, incidentally, may enter and remain on premises licensed for off-sale of alcoholic beverages or premises licensed and maintained and operated as a bona fide public eating place.

But if the premises are licensed as an on-sale general public premises, on-sale beer and wine public premises or on-sale beer

public premises, a minor may not enter or remain.

Finally, this: What defense is available to a licensee accused of selling to minors?

There are only three defenses: 1) That he did not sell or serve the minor person alcoholic beverage; 2) That the person sold or served is in fact 21 years of age or older, and 3) That the person, to whom he sold or served, furnished bona fide documentary evidence of age and identity (such as a motor vehicle operator's license, a selective service registration card or an identification card issued by the Armed Forces), and that the licensee in good faith carefully examined and reasonably relied upon such evidence.



THE A.B.C. STRUCTURE

Bulletin Staff Writer
The Department of Alcoholic Beverage Control is headed by a director who is appointed by the governor and is subject to the confirmation of the State Senate.

The director holds office at the pleasure of the governor and may be removed by a majority vote of both houses of the Legislature. The director in turn appoints a chief deputy director and three assistant directors. All other employees of the ABC are appointed under the merit system on the basis of competitive examination.

The ABC is headquartered in

Sacramento and includes the director's office and other offices performing licensing, accounting, legal, fair trade and price posting, training and personnel duties for the department.

For administrative purposes, the state is divided into two divisions, Southern and Northern. An assistant director is in charge of each division. The state is further divided into 19 districts, with a total of 23 districts and branch offices. A district administrator is in charge of each district which is staffed by investigators and clerical personnel.

Special investigators inspect applications for licenses to sell alcoholic beverages and report on the moral character and fitness of applicants and the suitability of premises where sales are to be conducted. These reports are reviewed at the district and division offices and are forwarded to headquarters at Sacramento, from which the license is issued. If the license is denied, or if its issuance is protested, the applicant is entitled to a hearing before a hearing officer of the Office of Administrative Hearings, State Department of General Services.

After hearing the evidence, the hearing officer makes a proposed decision which is reviewed by the hearing and legal section and acted upon by the ABC director.

Special investigators also investigate violations of the ABC Act and cause the prosecution of offenders. Licensees who sell alcoholic beverages to persons under the age of 21 years, after hours, or otherwise violate the ABC Act may be subject to disciplinary action and may have their licenses suspended or even revoked after hearing before a hearing officer.

POSITIONS DESCRIBED

In sum, this is a description of positions in the ABC:

---Director: Serves as chief executive of the department; has final responsibility and authority for all departmental actions.

---Chief Deputy Director: Serves as chief of staff and acts for the director in his absence.

---Administrative Assistant: Undertakes special projects

assigned by the director; responsible for instruction, interpretations and procedures and ABC-AM Manual, coordinator for forms programs, merit award suggestions, and paperwork management.

---Assistant Director, Administration: Plans, organizes and directs public information and training activities statewide; assists the director in carrying out various statewide programs; responsible for budget preparation and fiscal control; represents the director before various state and industry conferences and meetings; makes special studies and surveys for director; responsible for operation of administrative units of headquarters office.

---Chief, Business Practices: Plans, directs and coordinates the business practices program, recommending investigative activities and providing guidance and direction; serves as advisor to the director, Department personnel, licensees, industry association representatives and the general public in complex business practices, tied-house and related fields.

---Personnel Representative: Gives advice and assistance on personnel procedures; represents department in inter-agency personnel matters; responsible for maintenance of central records of personnel and documentation of all personnel transactions.

---Accounting Officer: Prepares annual departmental budget; maintains central fiscal

records; responsible for processing all documents related to department's fiscal affairs.

---Licensing Supervisor: Responsible for the operation of the licensing, refund, additional fee, allocation, and central licensee files units; conducts liaison with data processing unit of State Board of Equalization; consults with the administrative staff and others on licensing problems; maintains contact with the Sales Tax and Beverage and Cigarette Tax Divisions of the State Board of Equalization, and other public agencies.

---Price Posting Supervisor: Maintains central records on fair trade and price posting; advises licensees and division and district offices on problems related thereto.

---Principal Counsel: Serves as legal advisor to the director; schedules and supervises the work of a staff of counsels; responsible for review of advertising proposals through his subordinates.

---Staff Counsel: Does legal work relating to the provisions of various state laws and departmental rules and regulations; prepares and presents cases as the department's legal counsels; reviews proposed decisions.

---Hearing and Legal Supervisor: Maintains central records on pending accusations, protests and petitions; prepares weekly schedule of departmental actions.

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Dealing With Millions

(Continued From Page 1A)

An amount approximately equivalent to the total of \$24 and \$52 fees is included in the department's annual budget for investigation of violations of chapters of the ABC Act which involve fair trading and price posting of distilled spirits and wine and tied-house restrictions.

The United States Treasury Department, through its Alcohol, Tobacco and Firearms Division, collects federal taxes on the manufacture, sale and distribution of alcoholic beverages.

According to the State Department of Finance, this is the history of excise tax in California:

Distilled Spirits:	\$0.80 per gallon from 1933 to 1954
	\$1.50 per gallon from 1955 to 1967
	\$2.00 per gallon from 1967 to 1974
Dry Wine:	\$0.02 per gallon from 1933 to 1936
	\$0.01 per gallon from 1937 to 1974
Beer:	\$0.02 per gallon from 1933 to 1958
	\$0.04 per gallon from 1959 to 1974

There have been, in past legislative sessions, serious attempts to increase the excise taxes on alcoholic beverages sold in California.

Of all the areas of the industry, the question of taxation is the one most regularly raised by the lawmakers.



RUSSELL S. MUNRO

Russell S. Munro was the first permanent director of ABC. A native of Spokane, Wash., Munro grew up in California. He was a 1935 graduate of Stanford University and 1938 graduate of the University of Southern California School of Law. He was a Los Angeles attorney until 1942 when he joined the Army Ordnance Department. He entered state service in 1946 as an attorney for the Department of Public Works, for which he was deputy director in 1953. He was appointed ABC director in early 1955 and became active in national liquor administration associations. He resigned in 1959, later represented the California Restaurant Association and died in 1967.



THOMAS MARTIN

Thomas Martin, a native of Las Vegas, was ABC director from 1959 to 1960 at the special request of Gov. Edmund "Pat" Brown. Martin, one of Sacramento's best-known trial lawyers, is a 1936 graduate of the University of California and a 1939 graduate of Boalt Hall School of Law. He was a deputy U.S. attorney in San Francisco from 1940 to 1948, in general practice in Oroville from 1948 to 1950, U.S. attorney in Sacramento from 1950 to 1951, chief assistant to the state attorney general from 1952 to 1954 (and attained a reputation as a top crime-buster), in general practice in Sacramento from 1954 to 1959, ABC director from 1959 to 1960 and in general practice since 1960.



MALCOLM E. HARRIS

Malcolm E. Harris became ABC director in 1960. A native of Mississippi, Harris grew up in California and is a 1940 graduate of Oregon State University. He joined California state government as a correctional officer in 1941 and advanced through the ranks to become an associate warden in 1950. He was executive secretary of the California Defense Mobilization Service from 1951 to 1953 and was secretary to Gov. Goodwin J. Knight from 1953 to 1954. He was appointed deputy director of ABC in 1955 and director in 1960. He resigned in 1964. Active in professional affairs, Harris was president of the National Conference of State Liquor Administrators in 1961 and 1962. Currently, Harris is president of the Distilled Spirits Council of the United States, based in Washington, D.C.



JAMES O. REIMEL

James O. Reimel was ABC director from 1964 to 1966. A native of Montana, Reimel grew up and was educated in Sacramento. He was an inspector for the U.S. Post Office from 1936 to 1942, an investigator for the federal Office of Price Administration from 1943 to 1944 and joined the state in 1945 as an investigator in the Legislative Auditor's Office. From 1946 to 1952, Reimel was chief of the fraud investigation unit of the State Department of Employment and was assistant director of the department from 1953 to 1954. He joined ABC in 1955 as an area administrator, later became deputy director and then director. After he resigned, he became executive secretary of the California Retail Liquor Dealers Association. He died in 1971.



EDWARD J. KIRBY

Edward J. Kirby was appointed ABC director in 1967 directly from the top ranks of the F.B.I. A native of David City, Nebraska, Kirby graduated from the University of Nebraska in 1941 with a major in law. He joined the F.B.I. in 1941 and served in Washington, D.C.; Portland, Ore.; Salt Lake City and in San Diego. He was assigned as senior resident agent for the F.B.I. for 19 years in Orange County. In 1963, he assumed the position of supervisory special agent in the Los Angeles office of the F.B.I. He retired from the F.B.I. in March, 1967 and became ABC director.

Kirby: "I Prefer Free Enterprise"

Bulletin Staff Writer

Edward J. Kirby, former top F.B.I. agent, has the distinction of serving as director of the ABC longer than any of his predecessors.

1967 through 1974 Kirby has been the man responsible for the sensitive enforcement of ABC rules and regulations.

In a special interview with Beverage Bulletin, Kirby discussed his eight years and some of the major issues involving the alcoholic beverage industry:

BEVERAGE BULLETIN: Would you prefer a "state control" system, rather than the system as practiced in California?

KIRBY: I much prefer the free enterprise system. The state has no business in business. The state has no business competing with private enterprise.

BEVERAGE BULLETIN: What is the role of ABC in legislative action?

KIRBY: The ABC does and has initiated legislation. The general public policy has been enunciated by the administration as a whole and ABC is, after all, part of the administration. In the matter of legislation, the concept is developed by the industry itself. And there have been several times where the ABC and the industry has worked together. The proper way, in my opinion, is to work together. All legislation is a matter of compromise; and that is not restricted to legislation dealing only with alcoholic beverages.

BEVERAGE BULLETIN: What do you count as achievements in the past eight years?

KIRBY: I'm most proud of the fact of fair trade—that the findings of the U.S. and California

Supreme courts have held up the marketing practices act.

Also, the stopping of the sale of sex in order to help alcohol. And for that reason, the great majority of places that sell alcohol for consumption, men and women may go in without shadows being cast on their characters.

Also, for the first time in history, the licensees at all levels are able to compete fairly and equally. The industry as a whole, local government and everyone else concerned recognizes the job that ABC is doing. We've been able to achieve substantial compliance with all the statutes. We've firmly implanted in all the licensees that we're fair, firm and impartial. Throughout the industry in all of the states, California is recognized as the leader of beverage alcohol laws.

BEVERAGE BULLETIN: What are your thoughts on the industry itself?

KIRBY: We have convinced the industry that we meant what we said—to administer the laws without fear or favor. The industry is a legitimate and legal industry and does a lot of good work although they do deal with a product that can be very emotional.

By the time I came aboard eight years ago, the industry was anxious to show that they were good citizens. And they generally are. Without the major participation of 50,000 licensees, we could never have done it.

BEVERAGE BULLETIN: You've watched a lot of retailers in this industry succeed and fail. What's the secret of success?

KIRBY: It's simple. Like any other business: location and management ability.

In Business

Bulletin Staff Writer

The alcoholic beverage industry in California is like no other industry.

There are rules and regulations governing the manner of business that go far beyond normal business code rules affecting other businesses in California.

And that's what makes the industry a special one—one in which the businessman must pay special care in order to succeed.

Some California ABC rules are particular to this state. Such as the one that allows a retail licensee to remain open and serve alcoholic beverages during the hours that an election is being held.

But it is illegal in California to sell alcoholic beverages either by the drink or by the package between the hours of 2 a.m. and 6 a.m. of the same day.

BEVERAGE BULLETIN: How would you describe the relationship between ABC and the federal government?

KIRBY: Fine. This is the only industry in which the state is in complete control. Thanks to the 21st Amendment.

BEVERAGE BULLETIN: ABC deals with the industry, how does it deal with the public in terms of education?

KIRBY: One is enforcement of the ABC laws. And a second example is that ABC distributes 1½ million pamphlets to school youngsters to help them understand the law and the consequences of the purchase, possession or consumption of alcoholic beverages.

Also, a retailer may pick up beer and wine at the distributor's platform at any time, but manufacturers or wholesalers may not deliver any alcoholic beverage to a retail licensee's premises on Sundays or during hours other than between 6 a.m. and 8 p.m. of any other day.

A retailer cannot sell alcoholic beverages to another retailer and a retail licensee cannot give samples.

The ABC Act is quite strict on the whole question of inducements to purchase; simply stated, a retailer cannot offer anything that is intended to induce the sale of alcoholic beverages. The reason, of course, goes back to the very beginning of alcoholic regulations in the 1930s when temperance was part of the act.

Under certain restrictive circumstances, a wholesaler can give a retailer samples of the alcoholic beverages they distribute to retail licensees, but the retailer cannot sell those beverages which have been given to him as samples.

And what about peanuts, popcorn and pretzels? The ABC says that an on-sale licensee can offer the peanuts, popcorn and pretzels only if they are put in a bowl where anyone can take some whether a drink is purchased or not.

KEEP RECORDS

Important to any business is the matter of records. The ABC has some special rules about records: On-sale and off-sale general licensees must keep the original bills and invoices of distilled spirits purchases and off-sale licensees must keep records on all deliveries made away from the premises.

A.B.C. STRUCTURE

(Continued From Page 2A)

---Assistant Director, Field Operations: Within established policies, directs and supervises all department operations within one of the two administrative divisions of the state; advises the director on statewide policy.

---Deputy Division Chief: Assists in planning, directing and coordinating the work of the field offices of the department within an administrative division; acts for the assistant director, field operations, in his absence.

---Investigative Auditor: Plans and conducts complex investigations and financial audits of organizations; supervises, instructs and guides investigative staff assigned to investigations; prepares reports relating to investigations and financial audits.

---District Administrator: Responsible for the operation of a district office or the department; plans, directs and reviews the work of supervisors, investigators and office staff.

---Supervising Special Investigator: Directs a small group of investigators in the performance of alcoholic beverage control work; may be placed in charge of special projects or administrative units.

---Senior Special Investigator: Acts as lead man in investigations, conducts the more difficult and complex investigations; responsible for specialized investigation programs; supervises one of the branch offices of the department.

---Special Investigator: Performs investigative and enforcement work; advises and assists other agencies in law application and enforcement.

---Investigator Trainee: Performs routine investigations and enforcement work; assists investigators in completing more difficult assignments.

---Investigator Assistant: As learner and worker, assists with the more routine phases of licensing and enforcement investigations.



A.B.C. 1955—1975 — 20 YEARS OF CHALLENGES

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RISK TOO GREAT

One California retailer puts it this way: "The very presence of the ABC makes the risk too great for retailers to want to violate all the other laws involved. The possibility that books and procedures can be checked is enough deterrent to stop many problems before they start."

"Without the ABC there would be no one to enforce the California Unfair Practices Act. The state has not enforced it in other fields for years. There also has been created a system of checks and balances where an active industry keeps the state agency free of scandals which have been chronic in other states."

ORDERLY MARKET

"We have an orderly marketing system with control over the social aspects of alcohol use. Each manufacturer can choose the prices of his goods in orderly competition with each other manufacturer."

"The state does not fix prices. Each consumer can choose from a range of goods at retail prices. Each retailer can buy his goods at a price proportionately equal to each other retailer. We have no bootlegging and no illegal stills. Our economy is healthy." Those comments were from Ronald Ziff of the Los Angeles-based Westward Ho Markets.

Ziff's comments were being made, incidentally, at extensive hearings in 1973 by the Senate Select Committee on Laws Relating to Alcoholic Beverages. Committee chairman Alan Short (a Stockton Democrat who has since left public service) is, however, one of the severest critics of ABC.

Short: "There are two formidable obstacles confronting a decent approach to treating the alcoholic. The strength of the liquor lobbyists in California and the weakness of the State Department of Alcoholic Beverage Control, which, in my opinion, is an extension of the liquor industry."

"In the 41 years since Prohibition was repealed in 1933, California alcoholic beverage laws have been enacted and amended on a piecemeal basis ...

What has the department done for the state and its citizens? Practically nothing! You will note that nine out of ten bills enacted into law have been sponsored by the liquor industry."

Short says that since 1933, every director of the ABC, with one exception, "has gone to work in the alcoholic beverage industry after leaving state service. Several staff members in key positions have accepted employment in the industry ... one of the many criticisms of governmental regulatory bodies is that they become unwitting tools of the professions or industries they are supposed to regulate."

A MODEL STATE

But Edward J. Kirby, director of ABC, also said at the Short hearings:

"In discussions with the administrators of the other open states, it has been made clear to me that the structure of the industry and the laws regulating it in California are regarded by the other states as the model. California is recognized as the leader in the field of alcoholic beverage control legislation."

"Because of this, legislative committees from other states have visited California to study the structure and laws of this state."

Kirby noted that the very purpose of ABC is perhaps best stated in the wording of the Business and Professional Code of California which reads, in part:

"This division is an exercise of the police powers of the State for the protection of the safety, welfare, health, peace, and morals of the people of the State, to eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of alcoholic beverages, and to promote temperance in the use and consumption of alcoholic beverages."

The ABC, then, is an ever-changing regulatory agency. One continually forced to review and revise and interpret. Its influence on a major California industry is awesome and its effect on public morality and safety is deep.

Licensing. Key to A.B.C. Key To Doing Business

Bulletin Staff Writer

Thousands of Californians depend economically upon the orderly and prudent distribution of licenses in order to participate in the alcoholic beverage industry.

The ABC has been assigned by law to conduct and regulate the licensing so that private industry remains stable and that public interests be safeguarded.

The order comes from the licensing functions of ABC.

An ABC license is simply a permit to do that which would otherwise be unlawful. The ABC code is clear: "Such a license is not a matter of right, but is a privilege which can be suspended or revoked by administrative action because of violation of the Act or departmental rule."

There are more than 50 types of ABC licenses affecting all phases of the beverage industry, but those most concerned with the public are the retail licenses, including:

—Off-sale beer and wine license: Authorizes the sale of beer and wine for consumption off the premises where sold.

—Off-sale general license: Authorizes the sale of beer; wine and distilled spirits for consumption off the premises where sold.

—On-sale beer license: Authorizes the sale of beer for consumption on the premises where sold and the sale of beer for consumption off the premises where sold.

—On-sale beer license for public premises: Authorizes the sale of beer for consumption on the premises wherein no person under 21 years of age is allowed, plus the sale of beer for consumption off the premises where sold.

—On-sale beer and wine license: Authorizes the sale of beer and wine for consumption on a bona fide public eating place type premises plus the sale of beer and wine for consumption off the premises where sold.

—On-sale beer and wine license (public premises): Authorizes the sale of beer and wine for consumption on the premises wherein no person under 21 years of age is allowed plus the sale of beer and wine for consumption off the premises where sold.

—On-sale general license: Authorizes the sale of beer, wine and distilled spirits for consumption on a bona fide public eating place type premises plus the sale of beer and wine only for consumption off the premises where sold.

—On-sale general license (public premises): Authorizes the sale of beer, wine and distilled spirits for consumption on the premises wherein no person under 21 years of age is allowed plus the sale of beer and wine only for consumption off the premises where sold.

MUST QUALIFY

Not anyone can obtain an alcoholic beverage license. The department may refuse to issue a license to any person who has violated the Act, has a criminal record or is otherwise disqualified.

Furthermore, distilled spirits licenses generally are limited by law. Since 1939, the number of certain retail licenses has been limited. Currently, the ratio is one on-sale general license for each 2,000 population in the county in which the premises are situated, and one off-sale general license for each 2,500 population.

In applying for a license, an applicant must give his name and, if the business is a partnership, give the names of the principal officers. The location must be given and the applicant must state that he has no felony convictions.

Original fees include: On-sale general, \$6,000; on-sale seasonal, \$4,500; on-sale beer and wine, \$300; on-sale beer, \$200; off-sale beer and wine, \$50; off-sale general, \$6,000.

The act clearly states that the public must realize the intent to deal with alcoholic beverages. So the applicant must post the entrance of the premises with a notice for 30 days. The applicant for an on-sale license also must publish a notice in a newspaper of general circulation.

ABC notifies local law enforcement officials of the application and if the authorities protest, a hearing is conducted. Pending the outcome of the hearing, the license will not be issued.

The ABC may deny a license if an enforcement problem is apparent or if there is an undue concentration of licenses in that area. Also, a license may be denied if a showing of public convenience and necessity is not made.

A liquor license can be transferred, but only within specific rules of the ABC. If a license is transferred from person to person, a fee based on 50% of the original fee, but no more than \$1,250 or \$100 if no fee is specified.

On and off-sale general licenses may be transferred from one county to another, subject to legal quotas and other ABC restrictions.

Legislation prohibits a licensee from pledging his license as security for a loan or as security for the fulfillment of any agreement.

PROTESTS PERMITTED

Any person may protest the issuance of a license, but like an accusation, the protest must be verified, unless filed by a public officer.

The usual grounds for a protest, according to ABC history, has been that the applicant has violated the Act or has been convicted of a felony or is otherwise of bad moral character, or has a police record which disqualifies him; that the applicant is not the true owner of the business; that the premises are located near a school, church, hospital, or playground, or are in a residential area; or that licensing the premises would be contrary to a valid zoning ordinance.

Protests must be filed within 30 days from the first date of the posting of the notice of intention to engage in the sale of alcoholic beverages.

About Fair Trade

Bulletin Staff Writer

Much is said and written about "fair trade" and "price posting" and yet the issues become clouded by many.

And the concepts are under constant questioning by legislators, those in the industry, the public and by the administration.

California ABC laws are generally built on the premise that prices are regulated (for, among other reasons, to prevent huge discounts by major chains forcing small businesses under) and that the industry maintain a separate financial relationship between the wholesaler and the retailer (or, to avoid a "tied house").

Under price posting, the wholesaler schedules his own prices at which he sells to retailers. Under a fair trade contract for wine, specified prices to wholesalers and minimum prices to consumers are established in the Northern and Southern California trading areas. For the Mountain trading area, the prices to wholesalers may be minimum prices, except that the minimum prices shall not be less than the specified prices of the Northern or Southern trading areas, depending on which county of the Mountain trading area is involved.

For distilled spirits, the brand owner establishes the minimum retail prices at which the retailer sells the brand owner's product to consumers. All distilled spirits sold at retail in California must be sold according to minimum price schedules filed with the ABC.

The idea, of course, is that otherwise, price wars could occur, which would have a disruptive effect on the industry and unduly stimulate consumption.

The "minimum retail price schedule" is a written schedule filed with the department on which minimum container and case prices are shown. An off-sale retail licensee cannot legally sell to a consumer at less than these established prices.

Schedules are filed on or before the 15th of the month to take effect the first of the second succeeding month. Schedules to meet competition and first filings of new items, however, may be filed before the 15th to take effect the first of the following month.

Retailers may sell below minimum prices only when closing out a brand or when disposing of damaged merchandise or when selling distilled spirits on a court order.

ABC may (and often does—particularly at the high-sales holiday season) suspend or revoke licenses for violations of wine or distilled spirit price regulations. In the case of distilled spirits, the fines range from \$250 for a first violation to \$1,000 for a second and subsequent violation committed during a three-year period. On second offense, suspensions not exceeding 30 days could be imposed and a suspension or revocation could be levied as an alternative for a third offense.

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